

# WebMemo



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## Brazilian Retaliation Against U.S. Trade Violations: A Signal for Reform

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On March 1, Brazil will announce a list of retaliatory tariffs against U.S. goods—a response to the American government’s unwillingness to eliminate subsidies to domestic cotton producers. The World Trade Organization (WTO), in 2004 and again in 2005, deemed facets of America’s cotton program inconsistent with multilateral trade rules and U.S. commitments. The 2005 decision authorized Brazil to retaliate against U.S. goods and services, but Brazil opted instead to allow America time to reform its cotton program in line with international trade rules.

That reform has yet to occur. As a result, Brazil brought its case back to the WTO in 2009, and the trade body subsequently determined that Brazil could impose almost \$300 million in trade sanctions against U.S. goods and services. The WTO also opened the door for other retaliatory measures against American patent and other intellectual property rights—a novel approach to raising the cost of noncompliance. Recognizing that by raising the price of U.S. imports such trade measures would impose a cost on its own consumers and business, the Brazilian government has been carefully crafting a list of targeted products that will mitigate the tariffs’ impact on the Brazilian economy while still penalizing its trade partner to the north.

With the Administration’s intent to bolster U.S. exports as a means for economic recovery, the trade-distorting programs and unfair trade practices that invite such retaliation must be eliminated—after all, tariffs against U.S. goods and services impugn

their competitiveness in foreign markets. Moreover, America’s refusal to comply with adverse WTO rulings erodes U.S. credibility and influence in the debate shaping globalization and undermines the multilateral trading system. America can afford neither trade retaliation nor the loss of its leadership position in international economic issues, and the WTO is already weakened by nations’ inability to conclude Doha Round trade negotiations. The U.S. should not only change its cotton program this year, but it should also take a hard look at other needed reforms if its national export initiative is to be part of a legitimate trade policy.

**U.S. Cotton, Brazil, and the WTO.** Filed in 2002, Brazil’s original WTO complaint alleged that several U.S. cotton subsidy programs, enacted or continued in the 2002 U.S. Farm Bill, violated the United States’ obligations under the General Agreement on Tariffs and Trade, as well as the WTO’s Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture.<sup>1</sup>

The challenged subsidies included marketing loan program payments and user marketing (“step 2”) payments, to name but a few. Brazil alleged that several of the challenged subsidy programs consti-

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tuted “prohibited” export subsidies under WTO rules and that the remaining domestic supports were “actionable” subsidies that violated WTO disciplines because they resulted in “serious prejudice” to Brazil’s commercial interests by suppressing world cotton prices.

Finally, Brazil claimed that none of the U.S.’s cotton subsidies were expressly permitted by the WTO Agriculture Agreement, which allows nations to implement agricultural support programs that do not distort trade (“green box” spending). The U.S. opposed Brazil’s complaint, asserting that its programs were perfectly compliant with all WTO rules.

In its *Upland Cotton* decision and the subsequent appeal, the WTO sided almost entirely with Brazil. In response to these adverse WTO decisions, the U.S. in February 2006 repealed one of the prohibited subsidies—the “step 2” program—but left all other cotton supports untouched. Brazil thus returned to the WTO, which ruled in December 2007 (and again in June 2008 after a U.S. appeal) that, as a result of the U.S.’s repeated failure to reform its farm programs, Brazil was authorized to retaliate against U.S. imports in the amount of the injury that the U.S. subsidies impose on Brazil, determined in 2009 to be \$294.7 million in annual sanctions.

In February of this year—almost five years after the original WTO Appellate Body ruling—Brazil announced that its WTO-authorized sanctions would target \$829.3 million worth of U.S. trade and would take the form of both tariffs and intellectual property infringements. The IP sanctions will include suspensions or limitations on \$270 million worth of U.S. imports’ patents, copyrights, and trademarks and temporary bans on royalty remittances.

Brazil will also publish a final list of American goods, worth about \$560 million, that will face retaliatory tariffs because of American cotton subsi-

dies. A November 2009 preliminary list proposed that 222 American products—including food, medicine, medical equipment, cotton, appliances, cosmetics, and car parts—face tariff rates of over 100 percent.

**Practice What America Preaches.** The U.S. has brought 94 trade disputes to the WTO in the trade body’s 15-year history.<sup>2</sup> When the WTO has ruled in America’s favor, the U.S. government is quick to laud the decision and demand that the offending party immediately comply. Yet when the WTO rules against the U.S., as it did in *Upland Cotton*, American officials denounce the ruling, question the WTO’s authority, and make every effort to delay or skirt required reforms.

Such hypocrisy undermines U.S. credibility and the WTO’s efficacy. The Administration has announced its intention to root out the unfair trade practices of other nations, but such enforcement efforts will fall flat until America cleans up its own approach to trade. Why would other nations comply with WTO rulings when the U.S. so brazenly ignores them?

America’s refusal to comply with WTO rulings also erodes U.S. credibility as a free trade champion and weakens America’s influence in multilateral trade negotiations. It is time for America to live up to the same high standards it demands from the rest of the world and end trade-distorting support programs, including payouts to King Cotton.

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1. World Trade Organization, “United States—Subsidies on Upland Cotton,” October 3, 2002, at [http://www.worldtradelaw.net/cr/ds267-1\(cr\).pdf](http://www.worldtradelaw.net/cr/ds267-1(cr).pdf) (February 22, 2010).
2. World Trade Organization, “Disputes by Country,” at [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm) (February 22, 2010).